

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GOLD VALUE INTERNATIONAL
TEXTILE, INC.,

Plaintiff,

v.

SANCTUARY CLOTHING, LLC, et al.,
Defendant.

Case No. 16-cv-00339-JAK-FFM

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. The parties agree that this Stipulated Protective Order supersedes the proposed Stipulated Protective Order dated July 13, 2016 signed by the parties.

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve trade secrets, customer and pricing lists and
 3 other valuable research, development, commercial, financial, technical and/or
 4 proprietary information for which special protection from public disclosure and
 5 from use for any purpose other than prosecution of this action is warranted. Such
 6 confidential and proprietary materials and information consist of, among other
 7 things, confidential business or financial information, information regarding
 8 confidential business practices, or other confidential research, development, or
 9 commercial information (including information implicating privacy rights of third
 10 parties), information otherwise generally unavailable to the public, or which may be
 11 privileged or otherwise protected from disclosure under state or federal statutes,
 12 court rules, case decisions, or common law. Accordingly, to expedite the flow of
 13 information, to facilitate the prompt resolution of disputes over confidentiality of
 14 discovery materials, to adequately protect information the parties are entitled to keep
 15 confidential, to ensure that the parties are permitted reasonable necessary uses of
 16 such material in preparation for and in the conduct of trial, to address their handling
 17 at the end of the litigation, and serve the ends of justice, a protective order for such
 18 information is justified in this matter. It is the intent of the parties that information
 19 will not be designated as confidential for tactical reasons and that nothing be so
 20 designated without a good faith belief that it has been maintained in a confidential,
 21 non-public manner, and there is good cause why it should not be part of the public
 22 record of this case.

23
 24 2. DEFINITIONS

25 2.1 Action: this pending federal law suit.

26 2.2 Challenging Party: a Party or Non-Party that challenges the
 27 designation of information or items under this Order.

28 2.3 "CONFIDENTIAL" Information or Items: information (regardless of

1 how it is generated, stored or maintained) or tangible things that qualify for
2 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
3 the Good Cause Statement.

4 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
5 their support staff).

6 2.5 Designating Party: a Party or Non-Party that designates information or
7 items that it produces in disclosures or in responses to discovery as
8 “CONFIDENTIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY.”

9 2.6 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as
15 an expert witness or as a consultant in this Action and is not an employee of the
16 retaining Party of its affiliates.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this Action but are retained to represent or advise a party to this Action and
24 have appeared in this Action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL” or “CONFIDENTIAL OUTSIDE COUNSEL
9 ONLY.”

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery
11 Material from a Producing Party.

12 13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or
16 extracted from Protected Material; (2) all copies, excerpts, summaries, or
17 compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected Material.

19 Any use of Protected Material at trial shall be governed by the orders of the trial
20 judge. This Order does not govern the use of Protected Material at trial.

21 22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
27 or without prejudice; and (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3
4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each Party or Non-Party that designates information or items for protection under
7 this Order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The Designating Party may designate
9 Disclosure or Discovery Material “CONFIDENTIAL OUTSIDE COUNSEL
10 ONLY” only if it, in concurrence with its counsel, in good faith deems that
11 disclosure of such material to a party would be injurious to the commercial interests
12 of the Designating Party under the standards of Rule 26 of the Federal Rules of Civil
13 Procedure or Local Rules. The Designating Party must designate for protection only
14 those parts of material, documents, items, or oral or written communications that
15 qualify so that other portions of the material, documents, items, or communications
16 for which protection is not warranted are not swept unjustifiably within the ambit of
17 this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber the case development process or to impose
21 unnecessary expenses and burdens on other parties) may expose the Designating
22 Party to sanctions.

23 If it comes to a Designating Party’s attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Party must
25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in
27 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY”
8 (hereinafter “CONFIDENTIAL legend”), to each page that contains protected
9 material or, in the case of electronically stored information produced in native
10 format, to the medium conveying the information (e.g., contained in the e-mail, to
11 which the ESI is attached). If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine which
20 documents, or portions thereof, qualify for protection under this Order. Then, before
21 producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
23 portion or portions of the material on a page qualifies for protection, the Producing
24 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins).

26 (b) for testimony given in depositions that the Designating Party identify
27 the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony, or, within thirty (30) days after receipt of the

1 deposition transcript, advise opposing counsel of the specific pages to be maintained
 2 in confidence and affix the appropriate “CONFIDENTIAL legend” to each page of
 3 the transcript that contains Protected Material. The Designating Party shall send a
 4 list and/or copy of such designated Protected Material to the Receiving Party and the
 5 Court Reporter who shall conform all copies of the transcript in their possession to
 6 reflect such confidentiality designation and shall re-bind separately those portions of
 7 the testimony designated as Protected Material and shall mark the face of the
 8 separately bound transcript containing such Protected Information
 9 “CONFIDENTIAL PURSUANT TO COURT ORDER” or “CONFIDENTIAL
 10 PURSUANT TO COURT ORDER – AVAILABLE TO COUNSEL ONLY” as
 11 appropriate. Deposition transcripts shall be treated by the Parties as
 12 “CONFIDENTIAL OUTSIDE COUNSEL ONLY” until such designations are made
 13 or until the lapse of the thirty (30) day period.

14 (c) for information produced in some form other than documentary and
 15 for any other tangible items, that the Producing Party affix in a prominent place on
 16 the exterior of the container or containers in which the information is stored the
 17 appropriate “CONFIDENTIAL legend.” If only a portion or portions of the
 18 information warrants protection, the Producing Party, to the extent practicable, shall
 19 identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive
 22 the Designating Party’s right to secure protection under this Order for such material.
 23 Upon timely correction of a designation, the Receiving Party must make reasonable
 24 efforts to assure that the material is treated in accordance with the provisions of this
 25 Order.

26 27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a

1 designation of confidentiality at any time that is consistent with the Court's
2 Scheduling Order.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
4 resolution process under Local Rule 37.1 et seq.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
8 parties) may expose the Challenging Party to sanctions. Unless the Designating
9 Party has waived or withdrawn the confidentiality designation, all parties shall
10 continue to afford the material in question the level of protection to which it is
11 entitled under the Producing Party's designation until the Court rules on the
12 challenge.

13 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party in connection with this
17 Action only for prosecuting, defending, or attempting to settle this Action. Such
18 Protected Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the Action has been terminated, a
20 Receiving Party must comply with the provisions of section 13 below (FINAL
21 DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" and "CONFIDENTIAL OUTSIDE
26 COUNSEL ONLY" Information or Items. Unless otherwise ordered by the court or
27 permitted in writing by the Designating Party, a Receiving Party may disclose any
28 information or item designated "CONFIDENTIAL" or "CONFIDENTIAL

1 OUTSIDE COUNSEL ONLY” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
3 well as employees of said Outside Counsel of Record to whom it is reasonably
4 necessary to disclose the information for this Action;

5 (b) the officers, directors, and employees (including House Counsel) of
6 the Receiving Party and its insurer to whom disclosure is reasonably necessary for
7 this Action, except for Information or Items designated “CONFIDENTIAL
8 OUTSIDE COUNSEL ONLY”;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this Action and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional
15 Vendors to whom disclosure is reasonably necessary for this Action and who have
16 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information;

19 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
20 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
21 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
22 not be permitted to keep any confidential information unless they sign the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
24 agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material may
26 be separately bound by the court reporter and may not be disclosed to anyone except
27 as permitted under this Stipulated Protective Order;

28 (i) any mediator or settlement officer, and their supporting personnel,

mutually agreed upon by any of the parties engaged in settlement discussions; and
(j) any other person that the Parties agree to in writing.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL OUTSIDE COUNSEL ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
 4 Non-Party in this Action and designated as “CONFIDENTIAL” or
 5 “CONFIDENTIAL OUTSIDE COUNSEL ONLY.” Such information produced by
 6 Non-Parties in connection with this litigation is protected by the remedies and relief
 7 provided by this Order. Nothing in these provisions should be construed as
 8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
 10 produce a Non-Party’s confidential information in its possession, and the Party is
 11 subject to an agreement with the Non-Party not to produce the Non-Party’s
 12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party
 14 that some or all of the information requested is subject to a confidentiality
 15 agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated
 17 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 18 specific description of the information requested; and

19 (3) make the information requested available for inspection by the
 20 Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court within
 22 14 days of receiving the notice and accompanying information, the Receiving Party
 23 may produce the Non-Party’s confidential information responsive to the discovery
 24 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
 25 not produce any information in its possession or control that is subject to the
 26 confidentiality agreement with the Non-Party before a determination by the court.
 27 Absent a court order to the contrary, the Non-Party shall bear the burden and
 28 expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10
11 13. FINAL DISPOSITION

12 After the final disposition of this Action, as defined in paragraph 4, within 60
13 days of a written request by the Designating Party, each Receiving Party must return
14 all Protected Material to the Producing Party or destroy such material. As used in
15 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
16 summaries, and any other format reproducing or capturing any of the Protected
17 Material. Whether the Protected Material is returned or destroyed, the Receiving
18 Party must submit a written certification to the Producing Party (and, if not the same
19 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
20 (by category, where appropriate) all the Protected Material that was returned or
21 destroyed and (2) affirms that the Receiving Party has not retained any copies,
22 abstracts, compilations, summaries or any other format reproducing or capturing any
23 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
26 reports, attorney work product, and consultant and expert work product, even if such
27 materials contain Protected Material. Any such archival copies that contain or
28 constitute Protected Material remain subject to this Protective Order as set forth in

1 Section 4 (DURATION).

2
3 14. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED: September 6, 2016

10 By: /s/ Scott A. Burroughs

11 Scott A. Burroughs, Esq.

12 Trevor W. Barrett, Esq.

13 Justin M. Gomes, Esq.

14 DONIGER /BURROUGHS

Attorneys for Plaintiff

15 DATED: September 6, 2016

16 By: /s/ Alexander R. Malbin

17 Alexander R. Malbin, Esq. (*pro hac vice*)

18 Edmund J. Ferdinand, III, Esq. (*pro hac vice*)

19 Daniel Lacy, Esq.

20 FERDINAND IP, LLC

Attorneys for Defendants

21
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23
24 DATED: September 26, 2016

25
26 /S/FREDERICK F. MUMM

27 Frederick F. Mumm

28 United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on _____ [date] in the case of GOLD VALUE INTERNATIONAL TEXTILE,
 INC. v. SANCTUARY CLOTHING, LLC, et al., Case No. 16-cv-00339-JAK-FFM.
 I agree to comply with and to be bound by all the terms of this Stipulated Protective
 Order and I understand and acknowledge that failure to so comply could expose me
 to sanctions and punishment in the nature of contempt. I solemnly promise that I
 will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or type
 full address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____